IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

MFA.No. 235 of 2000()

OP(MV).2218/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PERUMBAVOOR
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APPELLANT: IN MFA. PETITIONER IN OP.(MV)

VARGHESE, AGED 52,
S/O . OUSEPH, EDATHALA HOUSE,
KARIKODE, OKKAL P.O.

2. KOCHUTHRESSIA, AGED 58 YEARS,
W/O. LATE VARGHESE, EDATHALA HOUSE,
KARIKODE, OKKAL P.O.

3. BABY, AGED 41 YEARS, S/O. LATE VARGHESE,
EDATHALA HOUSE, KARIKODE, OKKAL P.O.

4. THANKACHAN, AGED 39 YEARS, LATE VARGHESE,
EDATHALA HOUSE, KARIKODE, OKKAL P.O.

5. GEORGE, AGED 34 YEARS, LATE VARGHESE,
EDATHALA HOUSE, KARIKODE, OKKAL P.O.

6. THOMAS, AGED 32 YEARS, LATE VARGHESE,
EDATHALA HOUSE, KARIKODE, OKKAL P.O.

7. JESSY , AGED 30 YEARS, W/O. SIBY,
MUTHUKUNNEL HOUSE, VAZHAKKULAM P.O.,
MUVATTUPUZHA.

ADDL. APPELLANT 2 TO 7 ARE IMPLEADED AS PER ORDER DT.06.08.2007 IN IA. NO.1723/2007.

BY ADV. SRI.RAJESH VIJAYAN

M.F.A. NO.235/2000

RESPONDENTS IN MFA RESPONDENTS IN OP.(MV)
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1. MATHAI DEVASIA, POOTHAKUZHIYIL HOUSE, RAJAMUDI P.O., IDUKKI.

***2. JOHN K.M., S/O. MANI, KUTTIKATTU HOUSE, ADIMALY IDUKKI (DELETED)**

3. THE NATIONAL INSURANCE CO. LTD., BRANCH OFFICE, KOLENCHERY.

*** THE NAME OF 2ND RESPONDENT IS DELETED FROM PARTY ARRAY AT THE RISK OF THE APPELLANT VIDE ORDER DT. 17.10.05 IN IA. 3049/05.**

BY ADV. SRI.RAJAN P.KALIYATH

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & V.GIRI,JJ.

M.F.A.NO.235 of 2000

Dated this the 7th day of August, 2007.

JUDGMENT

KOSHY,J.

The appellant/claimant met with an accident on 24.3.1994, while he was travelling in a motor cycle as a pillion rider. It is his case that a jeep insured by the 3rd respondent insurance company, driven in a rash and negligent manner, by the 2nd respondent hit the motor cycle. The appellant suffered serious injuries. As against a claim of Rs.3,50,000/-, the tribunal has awarded only Rs.1,07,100/-. Only the quantum of compensation is disputed in this appeal.

2. The appellant/claimant was aged 52 years at the time of accident. The tribunal has taken Rs.1,000/- as his monthly income. In 1994, when the second schedule was introduced a sum of Rs.1,250/- was fixed as the notional income for a non-earning person [Rs.15,000/- in an year]. It is contended that he was conducting a rice mill. No evidence was produced regarding his income. But, it is a fact that he was maintaining a family. He was not a non-earning person. We,

therefore, fix Rs.1,500/- as the monthly income. The tribunal has stated that for a period of six months, the appellant was under treatment and for that period he was granted Rs.6,000/- for actual loss of earning. Since we have fixed Rs.1,500/- as the monthly income, he is entitled to get Rs.3,000/- more on account of actual loss of earning.

3. As far as the injuries are concerned, Exts.A6 and A7 medical certificates show that he has sustained the following injuries:

> **"(1). Lacerated sutured wound on the skull. (2). punctured wound over middle 3rd of (L) thigh. (3) Swelling and abnormal mobility over (L) thigh. (4) 5 cms unhealthy lacerated wound over medial aspect. (5) metacarpal shattered and fragments exposed and lying loose (6) Cyanosis of 5th finger (7) segmented comminuted fracture (L) femer (8) dislocation MCPJ (9) segmented and comminuted fracture 5th metacarpal (10) fracture 4th metacarpal"**

The above certificates would further show that the petitioner has undergone 3 major operations for skin grafting, bone grafting, open reduction and internal fixation and the petitioner was treated in the Medical Trust Hospital, Ernakulam for a period of

53 days on 3 different occasions. It would further show that on 24.3.94 under general anesthesia wound debridment and stabilization of the little finger was done by suturing and slab application. On 26.3.94 open reduction and internal fixation was done under general anesthesia with condylar butress plate and DC plate and he was discharged on 16.4.94 and he was readmitted on 27.5.94 for cast removal and physiotherapy and was discharged on 31.5.94 and he was again readmitted on 4.7.94. As there was failure of the implant and varus angulation at distal fracture site of (L) femur, open reduction and refixation with condylar plate 22 holed was done along with bone grafting on 13.7.94. He was discharged on 2.8.94.

4. These documents were accepted by the tribunal. The disability certificates show that he had 40% disability. The tribunal did not accept the same as the doctor was not examined and only Rs.10,000/- was allowed for disability. The medical certificate shows that he has suffered very serious injuries at the age of 52 years. The various fractures would show that he has got permanent disability. We are of the view that considering the disabilities, if 40% disability as certified by the

doctor is accepted and multiplier method is adopted, the petitioner will be entitled to a huge amount of 1500 x 12 x 40/100 x 11= Rs.79,200/-. Since the permanent disability assessed by the doctor was not accepted by the tribunal we are not awarding the above amount. But considering the injuries, fractures and treatment, the tribunal, at least, ought to have granted Rs.30,000/- for the disability and loss of earning power etc. The tribunal has awarded only Rs.10,000/-. Thus, he will be entitled to an additional compensation of Rs.20,000/- on that count. It is submitted that he has produced bills, Ext.A9 series, to the extent of Rs.68,622/-. The tribunal has accepted the above bills and it is also stated that those bills were not seriously disputed, but awarded only Rs.65,000/-. He will also have to undergo future treatment. No amount was awarded for future treatment. The tribunal has noted that the appellant was under treatment for six months as an in-patient and out-patient. Future expenses are also needed. Considering the bills produced and the nature of ailment, he will have to undergo future treatment, we award additionally a sum of Rs.12,000/- more towards treatment expenses, medical expenses, past and future. Thus, the additional

compensation payable will be Rs.35,000/-. It is contended that the compensation awarded for pain and suffering is meager. We are not inclined to enhance any amount on that count. The additional compensation of Rs.35,000/- now ordered should be deposited by the 3rd respondent with interest at 7.5% from the date of application till the date of deposit. On deposit, the appellant is allowed to withdraw the same.

Appeal is partly allowed as above.

Sd/-
(J.B.KOSHY)
JUDGE

Sd/-
(V.GIRI)
JUDGE

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J.B.KOSHY & V.GIRI,JJ.

M.F.A.NO.235 of 2000

JUDGMENT

7th August, 2007.